

Steven Sparkman, et al Plaintiff vs. City of Hollywood Police Officers' Retirement Sys Defendant

Broward County Case Number: CACE19015953
State Reporting Number: 062019CA015953AXXXCE
Court Type: Civil
Case Type: Appeal (Certiorari)
Incident Date: N/A
Filing Date: 07/29/2019
Court Location: Central Courthouse
Case Status: Pending
Magistrate Id / Name: N/A
Judge ID / Name: Judge AW, Appeals

- Party(ies)

Total: 8

Party Type	Party Name	? Address	? Attorneys / Address ★ Denotes Lead Attorney
Plaintiff	Sparkman, Steven		
Plaintiff	Ortiz, Luis A		
Plaintiff	Kidd, John		
Plaintiff	Campbell, Arnold		
Plaintiff	Casey, Daniel		
Plaintiff	Doklean, Dana		
Plaintiff	McKinney, Michael		
Defendant	City of Hollywood Police Officers' Retirement Sys		


- Disposition(s)

Total: 0

Date	Statistical Closure(s)		
Date	Disposition(s)	View	Page(s)

- Event(s) & Document(s)

Total: 3

Date	Description	Additional Text	View	Pages
08/15/2019	Filing Fee	Payor: WILLIAM SCHERER ; Userid: CTS-fg/t ; Receipt: 20191FA1A155693; ; Amount: \$401.00		
07/29/2019	Civil Cover Sheet			2
07/29/2019	Petition (eFiled)	FOR A WRIT OF CERTIORARI		17

- Hearing(s)

Total: 0

There is no Disposition information available for this case.

- Related Case(s)

Total: 0

There is no related case information available for this case.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STEVEN SPARKMAN, LUIS A.
ORTIZ, JOHN KIDD, ARNOLD
CAMPBELL, DANIEL CASEY,
DANA DOKLEAN, and MICHAEL
McKINNEY,

Case No.: _____

Petitioners,

v.

CITY OF HOLLYWOOD POLICE
OFFICERS' RETIREMENT SYSTEM,

Respondent.

_____ /

PETITION FOR A WRIT OF CERTIORARI

Petitioners Steven Sparkman, Luis A. Ortiz, John Kidd, Arnold Campbell, Daniel Casey, Dana Doklean, and Michael McKinney (“Petitioners”), through undersigned counsel, submit this following Petition for a Writ of Certiorari to review an order of the Board of Trustees of the Police Officers’ Retirement System of the City of Hollywood, Florida (“Board”), entered on June 28, 2019. A copy of the Order Denying Reclassification is attached hereto as Exhibit “A”.

I. BASIS FOR JURISDICTION

This Court, acting in its appellate capacity, has jurisdiction pursuant to Article V, Section 4 of the Florida Constitution and Florida Rule of Appellate Procedure 9.100(c)(2).

II. FACTS

This is a petition for certiorari review of a local government action denying the Petitioners' request to reclassify a portion of their employment for purposes of benefit calculation under a municipal police retirement system. While the Petitioners provide the following statement of facts, the Board below never engaged in any public discourse on the issues presented, much less conducted a proper hearing. Consequently, the record evidence is not only scant, but is also effectively nonexistent. Yet this is precisely why certiorari relief is appropriate and remand is necessary.

Retirement Systems in the City of Hollywood, Florida

The City of Hollywood ("City") established the Police Officer's Retirement System ("Police Pension") on November 20, 1991. *See* Hollywood, Fla., City Code § 33.125. The Police Pension is administered by the Board of Trustees.. *See Welcome to the City of Hollywood Police Officers' Retirement System Website*, City of Hollywood—Police Officers' Retirement System, <http://www.hollywoodpolicepensionfund.com/home.asp> (last visited July 29, 2019). To be eligible for

retirement under the Police Pension, the law enforcement officer must be a “police officer.” *See* Hollywood, Fla., City Code § 33.127(2)(a).

The City Code defines “police officer” accordingly:

POLICE OFFICER. Any person who is appointed or employed full time by the city, who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. § 943.10(6) and (8), respectively.

Hollywood, Fla., City Code § 33.126. Any employee not considered a “police officer” is eligible for retirement under the General Employee Retirement Plan. *See* Hollywood, Fla., City Code § 33.072.

The Petitioners

Steven Sparkman: Entering almost a quarter-century of public service, Mr. Sparkman has been employed by the City as a law enforcement officer since June 19, 1995, when he was hired as a “corrections officer.” He attended the corrections academy from June 26, 1995 through September 21, 1995. Subsequently, from July 15, 1996 through December 11, 1996, he attended the police academy. On December 11, 1996, he was given the position of “police officer” With the City.

Luis A. Ortiz: Mr. Ortiz was hired by the City on August 20, 1990. He graduated from the corrections academy on November 15, 1990, and was given the title of “police officer” with the City on October 26, 1992.

John Kidd: Mr. Kidd began as a “corrections officer” with the City on June 5, 1995, already certified at the time of his hiring. After completing a “cross-over class,” he was given the position of “police officer” on March 15, 1999.

Arnold Campbell: Mr. Campbell served as a “corrections officer” with the City from August 8, 1995 through July 21, 1997. He attended the corrections academy from September 7, 1995 through December 6, 1995. The City gave him the position of “police officer” on July 21, 1997 and he retired on February 25, 2019. He graduated from the police academy on December 16, 1997.

Daniel Casey: Mr. Casey was hired by the City as a “corrections officer” on July 20, 1992 and, subsequently, given the position of a “police officer” on July 17, 1995. He graduated the corrections academy on October 21, 1992.

Dana Doklean: Mr. Doklean served as a “corrections officer” with the City from October 27, 1997 through September 7, 1998, when he was given the position of a “police officer.” He completed the “cross-over class” as a “police officer.”

Michael McKinney: Mr. McKinney served as a “corrections officer” with the City from April 25, 1994 through July 15, 1995. He also completed the police academy.

During their time as “corrections officers” for the City, the Petitioners made warrant arrests and felony arrests, wrote notices to appear, drove marked police motor vehicles, and were armed with firearms provided by the City.

Reclassification Request and Order Denying Reclassification

Calculation of pension benefits by the Board occurred for the Petitioners at the point they either separated from employment with the City or entered the City’s deferred retirement option plan or its equivalent. As part of the benefit calculation, the Board considered the Petitioners to be employees under the General Employee Retirement Plan for the period they held the position of “corrections officer,” instead of police officers under the Police Pension, a classification which resulted in materially less retirement benefits for the Petitioners.

At the Board’s April 2019 meeting, during the only allotted time for the public to make comments to the Board, Petitioner Sparkman asked the Board to consider reclassifying his eighteen months’ of employment with the City as a “corrections officer” to under the Police Pension instead of the General Employee Retirement Plan. According to the minutes of the April meeting, legal counsel for the Board stated that *he* would consider the Petitioners’ position and would respond “at a later meeting.”

On June 28, 2019, after the Board’s June 2019 meeting, the City issued its Final Administrative Order Denying Re-classification of Credited Service, which

denied Petitioner Sparkman's request for reclassification. In the Order Denying Reclassification, the Board made the following scant factual findings:

The applications were all originally hired as corrections officers for the City of Hollywood Police Department. They were all certified as corrections officers pursuant to Chapter 943, Fla. Stat. Their assigned duties were primarily custody and transportation of inmates in the City jail. The applicants did have the authority to wear a firearm and did have the authority to apprehend any escape prisoner.

Following a period of service in the City jail, the applicants returned to the police academy and received certification as a law enforcement officer. Following this certification, the applicants were hired as police officers and enrolled in this Plan.

Order Denying Reclassification 1.

Critically important for this Court's review, it should be noted that the Board never heard from the Petitioners at the June meeting. In fact, the Petitioners were not at the June meeting because the public notice did not indicate the Board would be considering this matter. In other words, the Board denied the Petitioners' request for reclassification based solely on its legal counsel's own recitation of his version of the salient facts; no hearing, debate, conversation, or even mention of the matter on the record.

III. RELIEF SOUGHT

The Petitioners request this Court grant certiorari relief and remand for the Board to grant the Petitioners' request for reclassification of credited service.

IV. STANDARD OF REVIEW

“When a petitioner seeks review of a quasi-judicial action, the circuit court conducts what is known as ‘first-tier’ certiorari review. The circuit court’s review is confined to:

[1] whether procedural due process is accorded, [2] whether the essential requirements of the law have been observed, and [3] whether the administrative findings and judgment are supported by competent substantial evidence.

Broward Cty. v. G.B.V. Int’l, Ltd., 787 So. 2d 838, 843 (Fla. 2001). The Florida Supreme Court has recognized that, “[a]lthough termed ‘certiorari’ review, review at this level is not discretionary but rather is a matter of right and is akin in many respects to a plenary appeal.” *Dusseau v. Metro. Dade Cty. Bd. of Cty. Com’rs*, 794 So. 2d 1270, 1273-74 (Fla. 2001).

V. ARGUMENT

The Petitioners are entitled to certiorari relief from this Court. In hurried fashion, the Board made a determination on Petitioner Sparkman’s informal reclassification request without affording him notice and a meaningful opportunity to be heard. Further, the Board’s legal determination is erroneous. Finally, it cannot plausibly be said that the Order Denying Reclassification is supported by competent substantial evidence when there is no genuine way to understand how the Board came to its determination.

A. Whether the City accorded the Petitioners due process.

“[D]ue process requires both fair notice and a real opportunity to be heard.” *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001). “[T]he opportunity to be heard must be ‘at a meaningful time and in a meaningful manner.’” *Borden v. Guardianship of Borden-Moore*, 818 So. 2d 604, 607 (Fla. 5th DCA 2002) (quoting *Matthew v. Eldridge*, 424 U.S. 319, 333 (1976)). “The specific parameters of the notice and the opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding.” *Crosby v. Fla. Parole Com’n*, 975 So. 2d 1222, 1223 (Fla. 1st DCA 2008).

Here, the Board’s actions fall well short of comporting with due process for a number of reasons. First, the Board deprived them of a meaningful opportunity to be heard. The Petitioners’ sole opportunity to present their case to the Board was at the April meeting. Yet the meeting minutes reflect Petitioner Sparkman was allowed to speak only during the public comment session, which typically last no longer than a handful of minutes.

Without a fair and meaningful opportunity to be heard, the fact that the Board rendered its Order Denying Reclassification without a hearing, in and of itself, may be a per se violation of due process. *See Vichich v. Dep’t of Highway Safety & Motor Vehicles*, 799 So. 2d 1069, 1073–74 (Fla. 2d DCA 2001) (“Because all evidence

before the DHSMV was introduced without a hearing and with no opportunity for Mr. Vichich to object, on remand the circuit court may need to determine whether, as a matter of due process, this information was properly admitted into evidence in the lower tribunal and relied upon by it to support the order.”).

Further, they were not in attendance at the June meeting when the Board made the ultimate decision to deny their request for reclassification because they were not on notice that the Board was going to decide the issue at that meeting. The only “notice” the Petitioners received was at the *April* meeting, which the minutes reflect Mr. Robert Klausner, Legal Counsel for the Board, “said he would review the matter and *respond at a future meeting.*” April Meeting Minutes 1 (emphasis added). This is problematic for two reasons. Of course, “at a future meeting” provides no meaningful indication of *which* meeting a decision would be made. *See Harreld v. Harreld*, 682 So. 2d 635, 636 (Fla. 2d DCA 1996) (“While there are no hard and fast rules about how many days constitute a ‘reasonable time,’ the party served with notice must have actual notice and time to prepare.”). Second, Mr. Klausner is legal counsel to the Board. His statement that he would “respond” to the reclassification request has no official significance; only the Board can take official action on the request. Thus, the Petitioners had no reason to believe any forthcoming “response” from Mr. Klausner would take the place of a hearing to which they were entitled. All of this is woefully inadequate to constitute notice for purposes of due process.

Finally, and further compounding this deprivation of due process, the Petitioners run a serious risk of losing their only opportunity to obtain a fair review because the June meeting minutes are not yet publicly available. Tracking the statutory language of section 286.0105, Florida Statutes, the Board's website states the following disclaimer:

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, ***THEY WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, THEY WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE***, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE WHICH THE APPEAL IS TO BE BASED.

Public Notice, City of Hollywood—Police Officers' Retirement System, <http://www.hollywoodpolicepensionfund.com/BoardMeetings.asp#> (last visited July 29, 2019) (emphasis added). Again, despite this disclaimer, the minutes from the June meeting are not yet available on the City's website as of the date of the filing of this petition. This is particularly noteworthy because the thirty-day jurisdictional deadline for filing any form of *judicial* review runs on the date of the filing of this petition.¹

¹ July 29, 2019.

B. Whether the City observed the essential requirements of the law.

The Board relied heavily on a trio of Third District cases in denying the Petitioners' relief. First, the Board acknowledged that *Headley v. Sharpe*, 138 So. 2d 536, 537 (Fla. 3d DCA 1962) supported reclassification because the plaintiff desk sergeants, booking officers, prison guards and matrons in *Headley* were "issued badges identifying their authority, guns and they ha[d] the power of arrest," they were "police officers" for pension purposes under the statute. *Id.*; see also § 185.02, Fla.Stat. (1962). However, the Board attempts to use *City of Miami v. Rumpf*, 235 So. 2d 341 (Fla. 3d DCA 1970), to distinguish *Headley*, contending that "differing job descriptions within the police department led to approval of different pay classifications." See Order on Review 1 (citing *Rumpf*, 235 So. 2d at 341). Lastly, the Board relies upon *City of Miami v. Musial*, 291 So. 2d 77, 78 (Fla. 3d DCA 1974) to further distance itself from the holding of *Headley*. As will be explained, the Board misapplies *Rumpf* and *Musial*. Further, *Musial* supports the Petitioners' argument, *not* the Board's.

In *Rumpf*, the dispute involved pay disparity between officers in the correction division and those in the enforcement division. 235 So. 2d at 341. The trial court determined that the former "were entitled to the same pay"--the reasons for which are not entirely clear from the opinion. *Id.* Nevertheless, the Third District reversed, finding error in the way the trial court applied the city charter. *Id.* The city's civil

service board, *pursuant to the city charter*, established employee classifications, each of which required different set of prerequisites. *Id.*

Next, the Order Denying Reclassification cites to *Musial* as an example of how differences in training exemplify the distinction between police officers and other personnel. In *Musial*, a group of employees from the Identification and Records Bureau of the city of Miami's Police Department brought suit to be placed under Miami's pension plan for police officers. 291 So. 2d at 79. The *Musial* court discussed the differences between police officers and identification personnel, noting that identification personnel had less stringent physical requirements and were primarily responsible with taking photographs, record keeping and securing evidence for court cases. *Id.*

The problem with the Board's rationale is that Petitioners' training and duties as a correctional officer were nearly identical to police officers. Petitioners performed the same physical, defensive tactics, and firearms training as police recruits. Petitioners attended the police training program with police officer recruits, and was given no distinction because he was to be a corrections officer. Indeed, the Hollywood police training program was **mandatory** after completion of the Corrections Academy.

The Petitioners' duties and daily experiences as a corrections officer also mimic a police officer's. As corrections officers, the Petitioners were able to make

warrant arrests and felony arrests that occurred within his presence. The Petitioners could issue notices to appear, were issued firearms by the City of Hollywood Police Department, and were authorized to drive marked Hollywood Police vehicles. Moreover, if there was a shortage of correction officers a police officer would be assigned to correction officer duty at the jail. Under the *Musial* rationale, the Petitioners must be given credit for their time as a corrections officer.

C. Whether the City’s findings and judgment are supported by competent substantial evidence.

Finally, this Court must determine “whether the administrative findings and judgment are supported by competent substantial evidence.” *Broward Cty. v. G.B.V. Int’l, Ltd.*, 787 So. 2d 838, 843 (Fla. 2001); *see also Dusseau*, 794 So. 2d at 1274 (“Competent substantial evidence is tantamount to legally sufficient evidence.”); *Wiggins v. Fla. Dep’t of Hwy. Safety & Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) (writing that the evidence “must be reasonable and logical”). However, because the Board never conducted a hearing, it is impossible for this Court to engage in meaningful review, even further demonstrating the lack of due process that was afforded here.

CONCLUSION

The Petitioners respectfully request this Court grant a writ of certiorari and remand for the Board to reclassify their time pursuant to the Police Officers’

Retirement System of the City of Hollywood, Florida; or, in the alternative, to remand for a hearing consistent with the tenants of due process.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing document was prepared using Times New Roman, 14-point typeface in compliance with Florida Rule of Appellate Procedure 9.100(l).

Respectfully submitted,

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**OFFICE OF RETIREMENT
POLICE OFFICERS' RETIREMENT SYSTEM**

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Toll Free: (866) 738- 4776

TO: Affected Member (sent via Fedex)

FROM: Dave Williams

SUBJECT: Corrections Inquiry Order

DATE: July 1, 2019

For your information, please see the attached executed order of the Board of Trustees.



HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM

FINAL ADMINISTRATIVE ORDER DENYING RE-CLASSIFICATION OF CREDITED SERVICE

THIS CAUSE came before the Board, on proper notice, on June 28, 2019 on the request of Steven Sparkman and others similarly situated (the applicants)¹ to reclassify time served as a city of Hollywood corrections officer from the General Employee Retirement System to the City of Hollywood Police Retirement System credit. For the reasons which follow, that request is denied.

The applicants all were originally hired as corrections officers for the City of Hollywood Police Department. They were all certified as corrections officers pursuant to Chapter 943, Fla. Stat. Their assigned duties were primarily custody and transportation of inmates in the City jail. The applicants did have the authority to wear a firearm and did have authority to apprehend any escaped prisoner.

Following a period of service in the City jail, the applicants returned to the police academy and received certification as a law enforcement officer. Following this certification, the applicants were hired as police officers and enrolled in this Plan.

The terms of the Plan and the Section 185.02 limit membership in this Plan to "police officers." See, 185.02(16), Fla. Stat. and 33.126, Hollywood City Code.

The term "police officer" was essentially unchanged between the original adoption of Chapter 185 in 1953 and the addition of the certification requirement in 1991. See Chapter 91-45, Laws of Florida 1991. This addition is significant.

In *Headley v. Sharpe*, 138 So. 2d 536 (Fla. 3d DCA 1962), the Third District Court of Appeal found that the job description for corrections personnel in the city of Miami Police Department met the then applicable definition of police officer for pension purposes. That changed however, in 1970 when the same court determined that differing job descriptions within the police department led to approval of different pay classifications for persons in the police department corrections division, even though the corrections personnel were classified as police officers. See, *City of Miami v. Rumpf*, 235 So. 2d 341 (Fla. 3d DCA 1970). This evolutionary process ended with *City of Miami v. Musial*, 291 So. 2d 77 (Fla. 3d DCA 1974) when the same court denied a transfer from the City's General Employee Retirement plan to the fire and police plan because of the different training for persons in records and identification from those who were police officers, even though the employees all had a police classification. Significantly, the court also noted that a multi-year delay in requesting reclassification constituted a waiver of any potential misclassification.

¹ The applicants are Steven Sparkman, Michael McKinney, Luis Ortiz, James Barnick, Arnold Campbell, Sergio Lopez, Daniel Casey, John Kidd, Jeff Mathis and Dana Doklean.

The applicants have all been police officers for some years. Had they been corrections officers in 1962, the *Headley v. Sharpe* precedent would have applied. However, the passage of time since the applicants were classified from corrections to police and the development of separate certification pathways for corrections and police in Florida support the conclusion that the applicants request must be denied. While the Board values their service as corrections officers, the language of 185.02 and 33.126 control.

Accordingly, the applicants request for reclassification of their corrections service be and the same is hereby denied.

Done at Hollywood, Broward County, Florida, this 28 day of June, 2019.



Chairman

NOTICE OF APPELLATE RIGHTS

This is a final administrative order denying your request for reclassification of service. You have a right to seek review in the Circuit Court of the 17th Judicial Circuit of Florida by filing a petition for certiorari with the clerk of the Circuit Court within 30 days of the date this order is filed with the Administrator/Clerk of the Board in the manner prescribed in Rule 9.100, Florida Rules of Appellate Procedure. Failure to seek review within the time prescribed by law will make this order final. In any judicial proceeding, the unsuccessful party is required to pay the attorneys' fees of the prevailing party.

FILED WITH THE ADMINISTRATOR/CLERK OF THE BOARD THIS 28 DAY OF JUNE, 2019.